UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,178	03/10/2004	Kiyoharu Nishiyama	250026US2 DIV	3502

22850 7590 12/22/2006

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER	
HOYE, MICHAEL W	
ART UNIT	**PAPER NUMBER**
2623	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/22/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/796,178	NISHIYAMA ET AL.	
	Examiner	Art Unit	
	Michael W. Hoye	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 October 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 8-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 8-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 09/238,639.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on August 31,2006 has been entered.

Response to Arguments

2. Applicants' arguments with respect to claims 1 and 8-18 have been considered but are moot in view of the new ground(s) of rejection.

Regarding amended independent claim 1, as well as amended independent claim 13, the Applicants argue on page 6 of the Remarks section that, "Although the receiving site is coupled to [the] distribution center via communication link 15 (*see* Fig. 1 of Nemirofsky), there is no description or suggestion that the uplink control system (or the distribution center) is configured to determine whether any of the plurality of contents are displayed on the terminal apparatus."

In response to the amendment to claims 1 and 13, which recites, "a remote monitoring unit configured to determine whether any of the plurality of contents are displayed on the terminal apparatus", the Examiner notes that Nemirofsky specifically discloses on page 22, lines 23-32 that:

> "As the insertion control units 56 perform their function, they collect verification logs and failure/alarm information with respect

> to the commands and other control data received. When certain kinds of failure occur, it is desirable to have the insertion control unit 56 dial the UCS and transmit descriptions of those failures for corrective actions and analysis. Also, the advertisers and other providers of video for the UCS commonly want to have the statistical verification that their video was received and delivered to the organizations being served." (also see pg. 22, line 33 – pg. 23, line 5).

Although Nemirofsky teaches remote monitoring including collecting verification logs and failure/alarm data as described above, Nemirofsky does not explicitly disclose determining whether any of the plurality of contents are displayed on the terminal apparatus. However, the Examiner takes Official Notice that it is notoriously well known in the art of video distribution systems to include the use of a remote monitoring unit configured to determine whether any of the plurality of contents are displayed on the terminal apparatus for the advantage of confirming or verifying whether or not contents (i.e. advertisements, programming, broadcasts, other types of data, etc.) are displayed on a terminal apparatus. Therefore, it is submitted that it would have been clearly obvious to one of ordinary skill in the art at the time of the invention to include the use of a remote monitoring unit configured to determine whether any of the plurality of contents are displayed on the terminal apparatus for the advantages given above.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1 and 8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky et al (WO 94/03995), previously cited by the Examiner.

As to claim 1, note the Nemirofsky et al reference which discloses a delivery system for delivering a plurality of contents. The claimed center system configured to deliver the plurality of contents is met by the uplink control system (UCS) 4 in the distribution center (DC) as shown in FIG. 1 (pg. 8, lines 10-18). The claimed plurality of terminal systems configured to receive the plurality of contents from the center system and to display the plurality of contents is met by the receiving sites (RS) with television(s) 14 as shown in FIG. 1 (pg. 8, lines 18-25). The claimed communication lines connecting said center system to said plurality of terminal systems and configured to transmit the plurality of contents is met by the data communication link 15 in FIG. 1 (pg. 8, lines 22-25) and non-satellite forms of distribution, such as cable or other types of communication lines (see pg. 40, lines 10-12). The claimed wherein said center system comprises a delivery-schedule setting unit configured to set a schedule of delivery of the plurality of contents is met by traffic control computer 24 in FIG. 2, which allows for the setting of sequencing, timing, and distribution or delivery scheduling (see pg. 9, line 37 – pg. 10, line 4). The claimed content-delivery unit configured to identity the contents to be delivered to a terminal apparatus based on attribute information indicative of at least one characteristic of the terminal apparatus and to deliver the contents to the terminal apparatus is met by the system control computer 26 in FIG. 2, which controls playback control unit 34 that actuates playback devices 32 upon receiving a signal from the system control computer (see pg. 8, line 36 – pg. 9, line 20; pg. 9, line 35 – pg. 10, line 9; and pg. 36, line 34 – pg. 37, line 9), and by the traffic control computer 24 (located in UCS 4, see FIG. 2), which stores and controls terminal-attribute

information in a database (see pg. 19, lines 1-25; pg. 20, line 30 – page 21, line 7, also see pg. 10, line 27 – pg. 11, line 5), where the trafficking system schedules and sequences programming segments based on desirable receiver attributes (pg. 31, lines 2-14 & pg. 36, lines 7-12), and delivers the contents to selected terminal systems (see pg. 24, lines 4-5, and pg. 36, lines 7-9). More specifically, Nemirofsky teaches that programs, advertising or "contents" may be targeted and customized based on individual receivers in stores, sections of store aisles, geographic regions or location, etc. (see pg. 20, line 27 – pg. 21, line 12; pg. 31, lines 2-14 & pg. 36, lines 1-12, see attributes including receiving site description and location, modem phone number, etc., as well as, delivering update data and/or real time live interrupts, such as a weather forecast, for example). As to the claimed, "remote monitoring unit configured to determine whether any of the plurality of contents are displayed on the terminal apparatus", Nemirofsky specifically discloses on page 22, lines 23-32 that:

> "As the insertion control units 56 perform their function, they collect verification logs and failure/alarm information with respect to the commands and other control data received. When certain kinds of failure occur, it is desirable to have the insertion control unit 56 dial the UCS and transmit descriptions of those failures for corrective actions and analysis. Also, the advertisers and other providers of video for the UCS commonly want to have the statistical verification that their video was received and delivered to the organizations being served." (also see pg. 22, line 33 – pg. 23, line 5).

Although Nemirofsky teaches remote monitoring including collecting verification logs and failure/alarm data as described above, Nemirofsky does not explicitly disclose determining whether any of the plurality of contents are displayed on the terminal apparatus. However, the Examiner takes Official Notice that it is notoriously well known in the art of video distribution systems to include the use of a remote monitoring unit configured to determine whether any of

the plurality of contents are displayed on the terminal apparatus for the advantage of confirming or verifying whether or not contents (i.e. advertisements, programming, broadcasts, other types of data, etc.) are displayed on a terminal apparatus. Therefore, it is submitted that it would have been clearly obvious to one of ordinary skill in the art at the time of the invention to include the use of a remote monitoring unit configured to determine whether any of the plurality of contents are displayed on the terminal apparatus for the advantages given above.

As to claim 8, the claimed delivery system as claimed in claim 1, further comprising an output schedule setting unit configured to set an output schedule as the attribute information of the terminal apparatus, said output schedule defining a schedule according to which the contents to be delivered to and stored at the terminal apparatus are displayed at the terminal apparatus, and wherein the output schedule set by the output schedule setting unit is transmitted to the terminal apparatus is met by the sections of the Nemirofsky reference specifically directed to the system control computer 26 and the traffic control computer 24 as described above in claim 1.

As to claim 9, the claimed delivery schedule setting unit is configured to set a delivery schedule as the attribute information of the terminal apparatus, said delivery schedule defining a schedule according to which contents are delivered during a low utilization period in which a utilization of the terminal apparatus drops below a predetermined level is met by updates that may be sent nightly while most retail stores are closed (see pg. 37, lines 9-21).

As to claim 10, the claimed delivery schedule setting unit derives the utilization of the terminal apparatus based on a preset output schedule is met by the traffic system located in UCS 4 as described above (see pg. 31, line 1 – pg. 32, line 34, also see pg. 22, lines 23-31 and pg. 23, line 34 – pg. 24, line 5).

As to claim 11, the claimed delivery schedule setting unit includes a delivery scheduling function to control the delivery of the contents identified for the terminal apparatus based on the delivery schedule already set for the terminal apparatus and the output schedule already transmitted to the terminal apparatus is met by the traffic system located in UCS 4 as described above, and more specifically by the playlist function (see pg. 31, line 1 – pg. 32, line 34).

As to claim 12, the claimed delivery schedule setting unit is provided with a function to modify a currently effective delivery schedule, and wherein when the delivery schedule is to be newly set for the terminal apparatus to deliver new contents to the terminal apparatus, said function derives an available time according to the output schedule and the delivery schedule and a time required to deliver the contents based on the output schedule and delivery schedule currently set for the terminal apparatus and the low utilization period of the terminal apparatus is met by the traffic system located in UCS 4 as described above, and more specifically by the playlist function, as well as store forward and nightly updates functionality (see pg. 31, line 1 – pg. 32, line 34 and pg. 36, line 34 – pg. 37, line 21).

As to claims 13-18, the claims are rejected based on similar grounds as described in the rejection of claims 1 and 8-12 respectively.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael W. Hoye whose telephone number is **571-272-7346**. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at **571-272-7353**.

Any response to this action should be mailed to:

Please address mail to be delivered by the United States Postal Service (USPS) as follows:

Mail Stop _____
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Effective January 14, 2005, except correspondence for Maintenance Fee payments, Deposit Account Replenishments (see 1.25(c)(4)), and Licensing and Review (see 37 CFR 5.1(c) and 5.2(c)), please address correspondence to be delivered by other delivery services (Federal Express (Fed Ex), UPS, DHL, Laser, Action, Purolater, etc.) as follows:

United States Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Some correspondence may be submitted electronically. See the Office's Internet Web site **http://www.uspto.gov** for additional information.

Or faxed to: 571-273-8300

Hand-delivered responses should be brought to the Customer Service Window at the address listed above.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is **571-272-2600**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR system, see **http://pair-direct.uspto.gov**. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

Michael W. Hoye
December 15, 2006

JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600